

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 25, 2013

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERMAINE T. BROWN,

Defendant - Appellant.

No. 13-3178
(D.C. No. 5:08-CR-40036-SAC-1)

ORDER

Before **BRISCOE**, Chief Judge, **KELLY** and **BACHARACH**, Circuit Judges.

This matter is before the court on the government's motion to dismiss this appeal because the notice of appeal is untimely. Upon consideration of the motion and the defendant's response, the motion is granted.

Judgment was entered on January 28, 2013. The defendant filed a motion for leave to appeal on May 31, 2013, which was denied on June 5, 2013. The notice of appeal was filed on July 2, 2013, more than 5 months after entry of judgment and 27 days after the order denying the motion for leave to appeal.

In a criminal appeal, the defendant's notice of appeal is to be filed within 14 days of entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A). This rule is an "inflexible claim-processing rule[], which unlike a jurisdictional rule, may be forfeited if not properly

raised by the government.” *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007) (internal quotation omitted).

However, “[b]ecause the government timely objected to [the defendant’s] late notice of appeal, this court is bound to dismiss the appeal.” *Id.* at 1292.

The defendant argues that his motion for leave to appeal was a motion to reopen the time to appeal. However, the rule which allows a district court in specific narrowly defined circumstances to reopen the time to appeal only applies to civil cases. *See* Fed. R. App. P. 4(a)(6).

Accordingly, the government’s motion to dismiss is **GRANTED. APPEAL DISMISSED.**

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

by: Ellen Rich Reiter
Jurisdictional Attorney